

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for October 29, 2003 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #2002

PROPOSAL: A special permit to allow the sale of alcohol for consumption off the premises.

LOCATION: 4801 Randolph Street

LAND AREA: Approximately 26,700 square feet (.61 acres)

CONCLUSION: The convenience store/service station and car wash are open and operating on this site. The sale of alcohol for consumption off the premises is considered an accessory use in this instance, and would not significantly increase the impact of this use upon the neighborhood. The mitigation plan included as part of this special permit includes measures to reduce the impact upon neighboring properties and is adequate.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 3-7, Block 2, Linwood Addition, Lancaster County, Nebraska.

EXISTING ZONING: B-1 Local Business, R-2 Residential

EXISTING LAND USE: Convenience Store/Service Station/Car Wash

SURROUNDING LAND USE AND ZONING:

North	Commercial	B-1
South	Single-family Residential	B-1
East	Single-family Residential	R-2
West	Office	B-1

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land use for the subject property.

ASSOCIATED APPLICATIONS: CZ#3394 - A text change to amend Section 27.62.685(c) to include specific mitigation factors to be considered in the review of special permits for the

consumption of alcohol off the premises. The applicant requested that the text change not go forward at this time and to have this special permit application reviewed under the existing provisions of the Zoning Ordinance.

HISTORY: SP#1970 - Submitted on **March 21, 2002**, requesting a special permit to allow the sale of alcohol for consumption off the premises at this same location. It was virtually identical to this application and received a recommendation for denial from staff because the licensed premises was located approximately 21' from a residence, and 30' from a residential district. On **May 1, 2002**, the Planning Commission voted to recommend denial by a vote of 6-3 after a public hearing. On **June 3, 2002**, the City Council voted 4-3 to approve the special permit. The Council resolution was subsequently vetoed by then Mayor Don Wesely on **June 5, 2002**.

ANALYSIS:

OVERVIEW:

This is the site of a former service station which has been demolished. A new facility containing a convenience store, a service station, and a car wash has been constructed on the site. This request is for a special permit to allow the sale of alcoholic beverages for consumption off the premises.

This application is the same as SP#1970 with two exceptions. First, the mitigation plan has been revised (Exhibit B of the application). It now includes comments relating to seating (item #4), entertainment (item #6), and neighbors (item #7) that were not included in the mitigation plan in SP#1970. Second, the area defined as the licensed premises has been revised. That portion of the building shown as car wash has been excluded as there is no door between the two portions of the building, and alcohol will neither be stored nor sold in that area.

The applicant included petitions supporting this application, however many of the petitioners do not reside in the neighborhood. All the petitions may be viewed in the Planning Department.

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC)

27.63.685: Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which may be waived by the City Council:

(a) Parking shall be in accordance with LMC Section 27.67.020.

The parking lot on this site is paved, and the number of off-street parking spaces and the design of the parking areas comply with the requirements of Lincoln Municipal Code (LMC).

(b) The sale of alcoholic beverages for consumption on the premises shall not be permitted without issuance of a permit under LMC Section 27.63.680 of this code.

The sale of alcohol for consumption on the premises has not been proposed, and a special permit to allow it has not been requested.

(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.

The area defined as the licensed premises no longer includes the car wash, and as a result it is 23' further away from the residence and the residential district to the south. However, it is still located closer than 100' to a residence both south and east, and to a residential district to the east. The approximate separation distances are as follows (distances are measured to the store, excluding the car wash):

	Residence	Residential District	Day Care
South	44'	112'	n/a
East	94'	30'	n/a

As stated previously, the mitigation plan has been revised from SP#1970 to include provisions relating to seating, entertainment, and the neighbors. The plan indicates that seating is less than 20% of the floor area; that there will be no live entertainment; and, that the applicant has the consent of 100% of the neighbors abutting the store. The plan also restates all the other provisions of SP#1970, including discontinuing alcohol sales at 10:00 p.m. and planting additional trees beyond the number required to enhance screening.

The layout of the site is such that the licensed premises faces commercial across Randolph Street, abuts the rear yards of the homes to the east, and has the car wash located between it and the abutting residence to the south. A 6' high cedar fence extends along the east and south property lines, with additional trees planted in a 12' wide landscape strip along the east. To enhance the screening effect, a 50-50 mix of

evergreen and deciduous trees would provide better year-around screening. Also, planting larger trees to begin with will provide immediate screening. The size of the trees being planted should be a minimum of 2 1/2" caliper. It should be noted that the 12' wide landscape strip is the portion of the site zoned R-2, and the sale of alcohol is not allowed in the R-2 district. If approved, this portion of the site must be excluded from the special permit.

The sale of alcohol for consumption off the premises is an accessory use to the convenience store. In this regard, there is a distinction between this use where the sale of alcohol is incidental, versus a bar or other similar use where the sale and/or the consumption of alcohol are the principal uses. The intensity of those uses is generally greater, and they would have more of an impact upon residential areas. Those instances require more scrutiny and potentially different consideration to ensure land use compatibility.

There is already a certain amount of light, noise and traffic associated with the commercial development on this site, but all within the limits of what is reasonably anticipated by the Zoning Ordinance and Comprehensive Plan. The additional impact upon the neighborhood as a result of off-sale at this location should not be significant. Factors such as the layout of the site in relation to the neighborhood and the provisions of the mitigation plan contribute positively towards maintaining compatibility.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

Parking lot lighting must comply with the applicable City of Lincoln Design Standards. Additionally, the mitigation plan notes that caution has been used in the placement of lighting under the gas pump canopy to focus the light where it is needed and away from adjacent properties. To help ensure this, the canopy lights should also be subject to the Design Standards to help contain light on the site.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not being proposed in conjunction with this facility or with the sale of alcohol.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to

the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are proposed with this special permit.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

The entrance door faces another commercial property to the north across Randolph Street. There are no doors that open to the residence and residential district to the south and east, respectively.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

No residential streets are used to access this site.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

(1) Revocation or cancellation of the liquor license for the specially permitted premises; or

(2) Repeated violations related to the operation of the permittee's business.

Planning Commission review and City Council approval is required for this use.

2. DEPARTMENT RESPONSES:

POLICE: The Police Department finds that the mitigation plan still shows the licensed premises to be within 100' of a residence and a residential district. Based upon these distances the Police Department is recommending denial. The review goes on to state that they understand that the mitigation plan can be approved at the discretion of the Planning Director.

PUBLIC WORKS: Public Works has no objection to this request.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the mitigation plan to include a note that states the gas island canopy lights will comply with City of Lincoln Design Standards for Parking Lot Lighting.
 - 1.2 Revise the mitigation plan and the landscape plan to include a planting schedule that shows one-half the number of trees to be planted as upright junipers that exceed 6' in height, planted in an alternating pattern with deciduous trees, and stating the minimum size of the trees planted is 2 1/2" caliper.
2. This approval permits the sale of alcohol for consumption off the premises at the convenience store located at 4801 Randolph Street, excluding the east 12' of Lot 3, Block 2, Linwood Addition, based on the accompanying mitigation plan.

Standard:

3. The following conditions are applicable to all requests:
 - 3.1 Before selling alcohol, all development and construction is to comply with the approved plans and the mitigation plan.
 - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

- 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

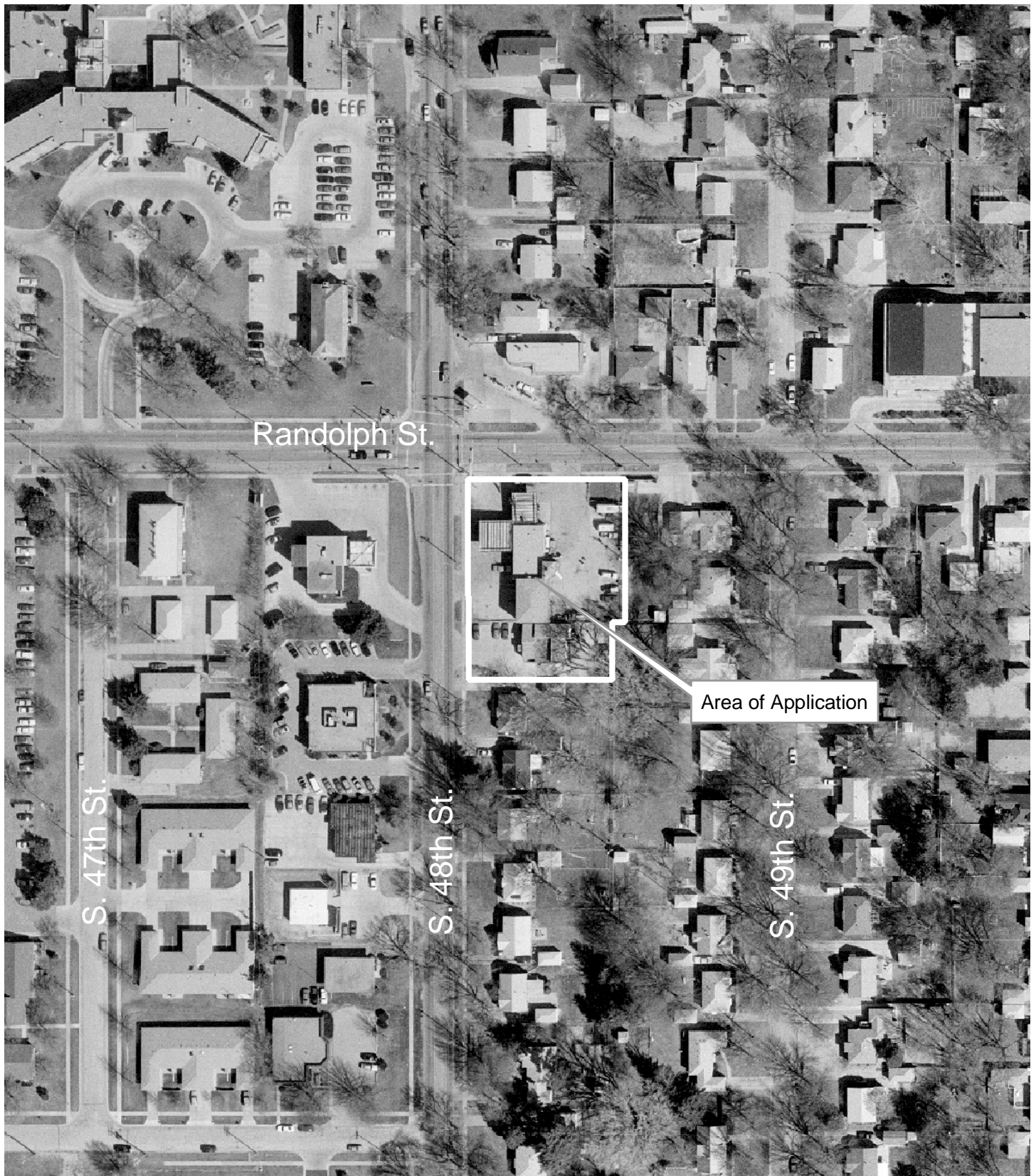
Prepared by:

Brian Will, AICP
Planner
October 15, 2003

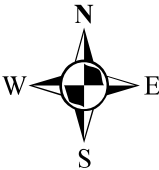
OWNER: Quin-C, Inc.
3003 South 13th Street
Lincoln, NE 68502 (402)423-7369

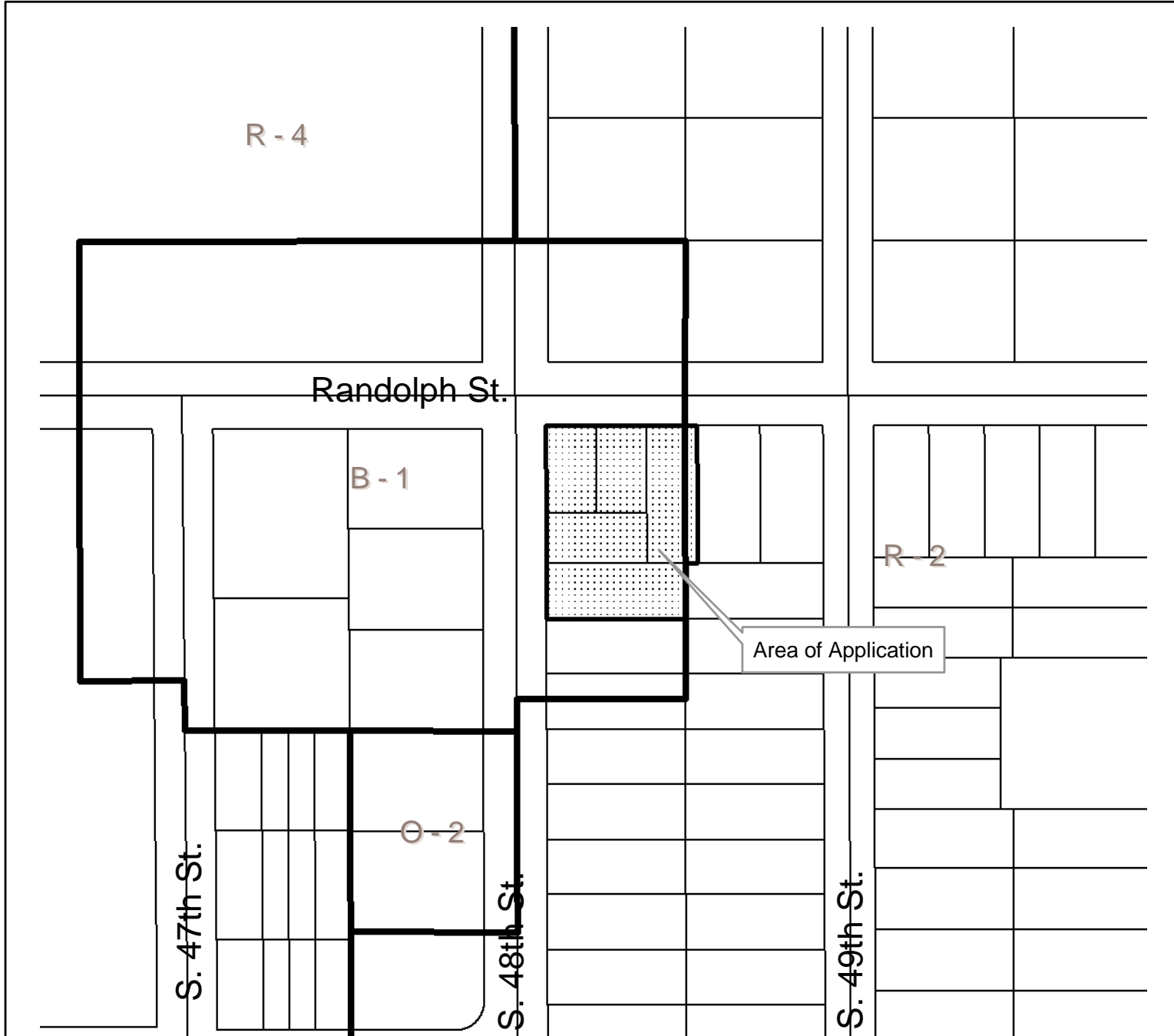
APPLICANT: Fast Break, Inc.
1234 South 14th Street
Lincoln, NE 68502 (402)476-3333

CONTACT: Chuck Salem
1234 South 14th Street
Lincoln, NE 68502 (402)476-3333



Special Permit #2002
S. 48th & Randolph



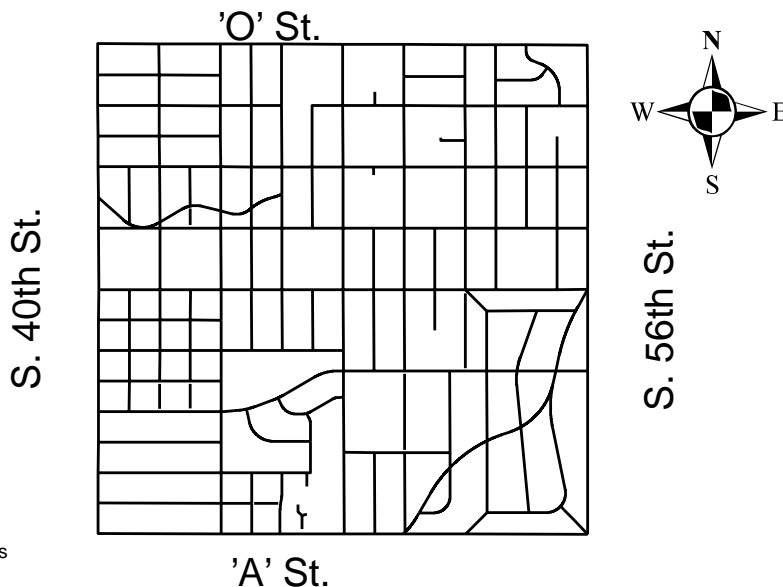
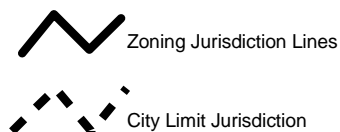


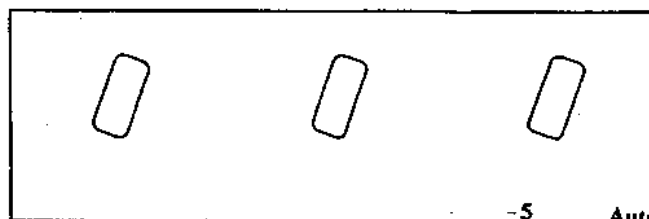
Special Permit #2002 S. 48th & Randolph

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 29 T10N R7E



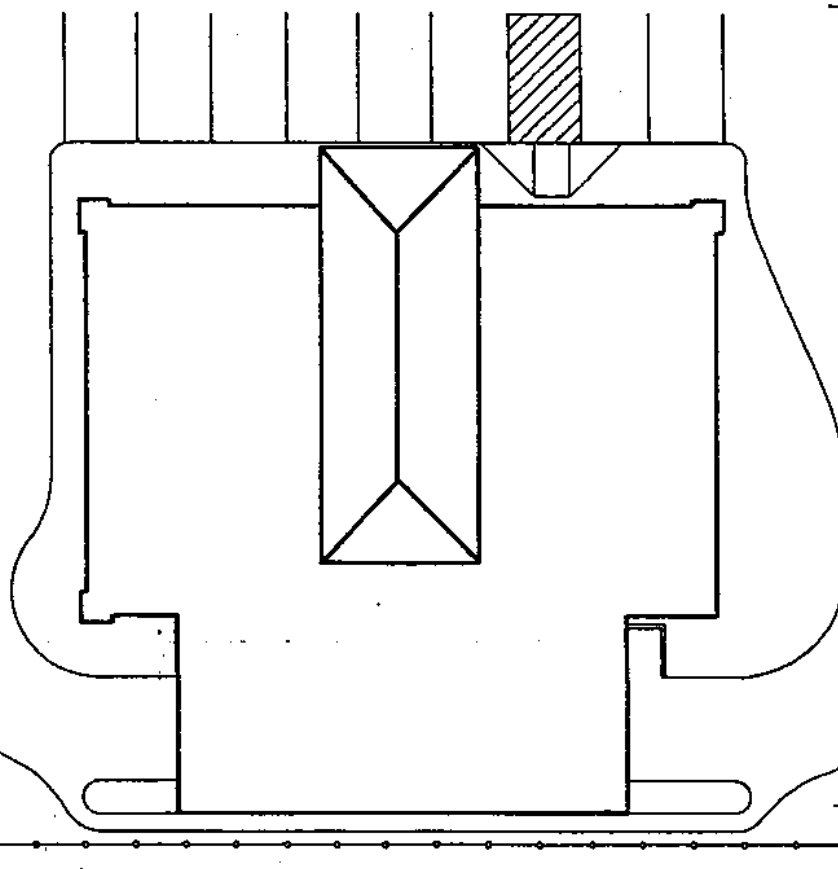


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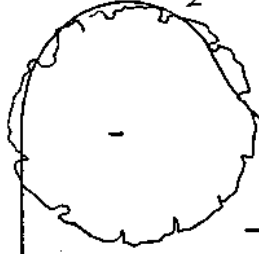
Autumn Purple Ash
Fraxinus Americana (Autumn purple)
1.5 Cal / B&B
25 spread x 40 Height

4

Snow Drift Crab
Malus (Snow Drift)
5-6' / Container
15 spread x 20 height



Autumn Purple Ash
2"



Colorado
Blue
Spruce 7'

Campbell's
CULTIVATING IDEAS
7000 South 56th Street
Lincoln, NE 68530
(402) 423-8356
www.campbellscustomers.com

PROJECT:

FASTBREAK CONVENIENCE STORE
800 SOUTH 48th STREET
LINCOLN, NEBRASKA

DESIGNED BY:
DENNIS THEYE
DATE: 4/2002
SCALE: 1"=10'
SHEET: 1 OF 1



Exhibit "D"

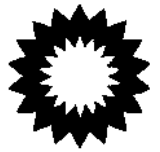
bp

Salem Oil Company

Box 81006

Lincoln, Nebraska 68501

402/476-3333



January 23, 2003

Brian Will
City Planning Dept.
555 South 10th Street
Lincoln, NE 68508

RE: 4801 Randolph Street

Brian:

The purpose of this store is to establish a full-service convenience store which will serve 1500 customers per day with a wide range of products.

We intend to be open Six A.M. to Midnight and will have six or seven employees. Our store will probably include gasoline, convenience and snack items, coffee and fountain drinks, bottles of pop and specialty drinks, and a pizza oven. We think that an off-sale beer license fits the needs of our neighbors.

Thank you,

A handwritten signature in cursive script, appearing to read "Chuck Salem".

Chuck Salem
Salem Oil Co.

Attachments:
EXHIBITS A - E

EXHIBIT "A"

Special Permit Zoning Application of Fast Break, Inc.

The Applicant is particularly aware of the requirements of Section 27-63 regarding special permits for liquor sales. The construction of this new convenience store facility replaces a formerly blighted site. The site is in an older neighborhood, and the owner and Applicant have taken and shall take measures to measure sure that lighting is designed and erected in accordance with lighting standards and that landscaping, screening and other methods that might be suggested or approved will be used to mitigate adverse effects, if any, of the proximity of the facility to any residential use.

There will be no drive-thru window used as part of the business, and no part of the operation will be conducted on any required building setback. The parking ratios are in compliance, and the business shall not have amplified outside sound or noise. No access door to the premises shall violate the requirements of Section 27-634 as specifically set forth.

The Applicant has worked with the City to provide vehicular ingress and egress to and from the property which benefits the intersection and does not disrupt the residential district.

It is important to the owner and Application that the facility be incorporated into the neighborhood as opposed to standing apart from it. The Applicant will work with the neighbors and City to minimize any impact of the facility on the abutting residential neighborhood.

Most importantly the applicant has received the consent for the requested use from 100 % of the abutting neighbors and has received signatures of over 500 of our customers requesting that this store be allowed an off-sale license as would be permitted by this special permit.

EXHIBIT "B"
MITIGATION PLAN

4801 Randolph, Lincoln, Nebraska
Special Permit
Fast Break, Inc.
Salem Oil Company

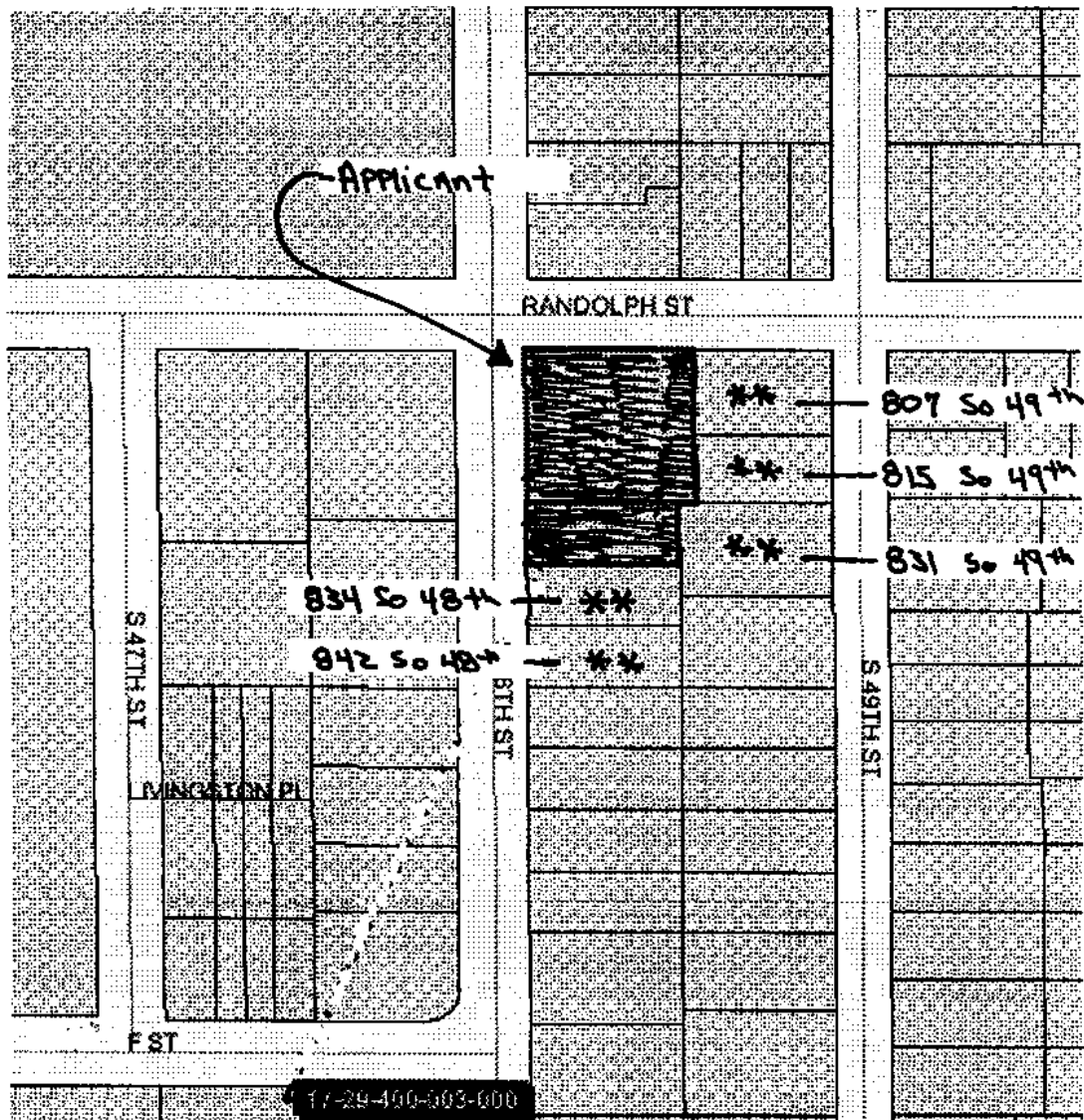
1. Site Plan/Operation. From the Start the Applicant tried to mitigate any effect that a new convenience store at this location would have on the abutting neighbors. Several different site configurations were considered, and the current site plan was the result of much consideration about the effects of lighting, noise, traffic and exit doors would have on the neighborhood. The building is north facing rather than a more desirable west facing in order to protect the closest abutting land owners. (for the Site Plan, see Exhibit "C")
- 2/3. Landscape/Fencing. Although not required or shown on the original Site Plan, the Applicant has proposed rather significant landscaping (See Exhibit "D" attached) and fencing. Our building plan also includes fencing on the south and east sides and retaining walls.
4. Seating. Seating is less than 20% of the floor area.
5. Lighting. We have taken particular caution in using lighting under the gasoline canopy which will focus the light where it is needed the most and the least amount to peripheral areas. We are sensitive to any light bleed onto neighboring properties, and that went into the design of the facility and location of the facility on the lot.
6. Entertainment. There will be no live entertainment on the premises.
7. Neighbors. The Applicant has consent of 100% of the neighbors abutting the store. (See Exhibit "E")
8. Revitalization. Please remember that this corner was a blighted site. We have received many phone calls with neighbors who were absolutely delighted with the prospect of having a full-service convenience store, especially one of this quality, being built in the neighborhood. This was not just a significant remodel, but the whole site was excavated, the previous buildings (2) were removed, and the entire site was rebuilt.
9. Hours of Operation. The Applicant would agree, as part of its mitigation plan, to limit its hours of operation to between the hours of 6:00 a.m. and 12:00 midnight. The Applicant would further agree to limit alcohol sales by ending such sales at 10:00 p.m.

Exhibit "E" to Special Use Permit Application

Applicant has signatures from 100% of the neighbors directly abutting the location supporting the license of the applicant for off-sale beer.

Applicant has signatures from over 500 customers in support of the application.

The following is a map of the abutting neighbors (**) who have signed in support



001-89-83 02:58 PM SALEM OIL CO 402 476 3333 P.01

SALEM OIL COMPANY

P.O. BOX 81006 • PHONE 402-476-3333
LINCOLN, NEBRASKA 68501

To Brian Will
Planning Dept.
City of Lincoln

Date 10-9-03

Speed Message

Subject The attached letter is Tabilha's
way of rescinding their previous
objection to our off-sale beer
licence application.

Signed

Chuck Salem



4720 Randolph St.
Lincoln, NE
68510

Phone
(402) 483-7671
(800) 267-2986

Web
www.tabitha.org

October 6, 2003

TO WHOM IT MAY CONCERN:

I am writing to express the appreciation of Tabitha Health Care Services for the considerable improvement BP Fast Break has brought to the southeast corner of 48th and Randolph Streets. They run a clean, professional operation. Clearly, they pay attention to all the details that make for an attractive and inviting place for the public. We are proud to have them as our neighbors and we wish them continued success in our neighborhood.

Sincerely,

Keith E. Fickenscher
President

Home Care Specialties

Nursing &
Rehabilitation Center

Adult Day Services

Home Health Care

Case Management

Meals on Wheels

Intergenerational
Center

Rehabilitation

Pastoral Care

Hospice

The Tabitha
Foundation

Tabitha Housing
Corporation

Tabitha Cares Because Christ Cares

A Serving Arm of the Nebraska Synod Evangelical Lutheran Church in America



MICHAEL WOOLMAN
<lpd737@CJIS.CI.LIN
COLN.NE.US>

To: Brian Will <BWill@ci.lincoln.ne.us>
cc:
Subject: Alcohol Sales Special Permit # 2002

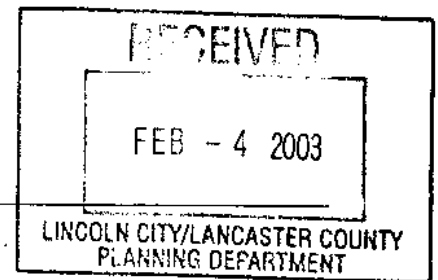
10/14/2003 02:12 PM

Mr. Will,

The Lincoln Police Department has reviewed the Alcohol Sales Special Permit #2002. The mitigation plan has been reviewed and the plan still shows the licensed portion of the building to be within 100 feet of a residential district/residential use. The Lincoln Police Department recommends denial based on the distance from a residential district/residential use. We also understand that the mitigation plan can be approved at the discretion of the Planning Director.

Sergeant Michael Woolman
Lincoln Police Department

M e m o r a n d u m



To: Brian Will, Planning Department

From: Charles W. Baker, Public Works and Utilities *CBH*

Subject: Special Permit #2002, Alcohol Sales Permit, 4801 Randolph

Date: February 3, 2003

cc: Randy Hoskins
Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the site plan and has previously approved the layout and operation of the site. Public Works has no additional comments and finds the site plan satisfactory.